

# State Office of Administrative Hearings



Cathleen Parsley  
Chief Administrative Law Judge

August 11, 2010

Les Trobman, General Counsel  
Texas Commission on Environmental Quality  
PO Box 13087  
Austin Texas 78711-3087

**VIA FACSIMILE 512/239-5533**

Re: SOAH Docket No. 582-09-3008; TCEQ Docket No. 2009-0283-AIR; In Re:  
White Stallion Energy Center, LLC.

Dear Mr. Trobman:

On July 26, 2010, the parties to this proceeding filed exceptions to the July 2, 2010 Proposal for Decision (PFD). In its exceptions, White Stallion Energy Center LLC (WSEC) included Attachment A, which contained suggested changes to the findings of fact (FOF) and conclusions of law (COL) in the proposed order. On August 6, 2010, the parties filed their responses to these exceptions. The Administrative Law Judges (ALJs) file these replies to the points on which the parties have filed post-PFD submissions.

## **A. Multiple Proposed Site Plans**

The ALJs recommend that the Commission overrule the protesting parties' exceptions regarding the issue of multiple site plans. We recommend that FOFs 38 and 39 be deleted.

## **B. Ozone Modeling**

The ALJs recommend that the Commission overrule WSEC's exceptions about the use of the San Patricio County monitor data. We also recommend that the Commission overrule the exceptions of the Environmental Defense Fund (EDF) about our conclusion that the monitoring data from Nueces County was sufficient to satisfy its burden of proof on this point. We recommend that TCEQ adopt WSEC's proposed revisions to these FOFs about ozone modeling: 110, 112, 113, 114, 114a, 115, 115a, 136, 137, 138, and 139.

## **C. Photochemical modeling.**

We recommend that the Commission overrule the protesting parties' exceptions about the legal necessity of including FOFs or COLs about photochemical modeling.

**D. PM<sub>10</sub> as a Surrogate for PM<sub>2.5</sub>**

We recommend that the Commission overrule the protesting parties' exceptions about the use of data about particulate matter of ten microns (PM<sub>10</sub>) as a surrogate for data about PM<sub>2.5</sub>.

**E. Coal dust emissions as a non-criteria pollutant**

We recommend that the Commission overrule WSEC's exceptions about the application's non-inclusion of coal dust as a non-criteria pollutant. We conclude that there was a need for the evaluation of coal dust as a pollutant. We concur with the ED that the statement in the PFD that WSEC proposes to move the receptors 25 meters landward was inaccurate. We recommend that TCEQ adopt WSEC's recommended FOFs on this issue: 214, 216, 217, 218, 219, 220, 221, 222, 222a, 222b, 222c, 222d, 225, and 226.

**F. Best Available Control Technology (BACT)**

The ALJs recommend that the Commission overrule the exceptions filed by EDF and Sierra Club/No Coal Coalition (SC/NCC) regarding the TCEQ's BACT process and analysis. We make these recommendations about the individual pollutants:

**1. Nitrogen Oxides (NO<sub>x</sub>)**

The ALJs recommend that the Commission adopt the changes to FOF No. 285, as proposed by WSEC in Attachment A to its exceptions. We note that WSEC stated that it could not find the record citation for our FOF 284 (cited inaccurately in WSEC's exceptions as FOF 281). Evidentiary support for that FOF is found at WSEC Ex. 102 at 53. But, we concur in WSEC's recommendation to delete the FOF.

**2. Particulate Matter (PM)**

The ALJs recommend that the Commission overrule WSEC's exceptions regarding PM.

**3. Carbon Monoxide (CO)**

The ALJs recommend that the Commission overrule WSEC's exceptions regarding CO.

**4. Sulfuric Acid Mist (H<sub>2</sub>SO<sub>4</sub>).**

The ALJs recommend that the Commission overrule WSEC's exceptions regarding H<sub>2</sub>SO<sub>4</sub>.

**G. Maximum Achievable Control Technology (MACT)**

The ALJs recommend that the Commission overrule EDF's and SC/NCC's regarding MACT.

The ALJs recommend that the Commission adopt the changes to COLs 57 and 59, as proposed by WSEC in Attachment A to its exceptions.

In its exceptions, WSEC pointed out an error in FOF No. 379. A CO limit controls organic HAPs, not non-mercury HAP metals as stated in FOF No. 379 in the proposed order. No party objected to this change proposed by WSEC. The ALJs recommend that the Commission correct FOF No. 379 as follows: "A CO limit of 0.010 lb\MMBtu based on a 12-month average is MACT for the control of organic HAPs ~~non-mercury HAP metals~~."

The ALJs recommend that the Commission overrule all other WSEC proposed changes to the FOFs and COLs regarding MACT, found in Attachment A to its exceptions.

### **1. Hydrogen Chloride (HCl) and Hydrogen Fluoride (HF)**

The ALJs have reviewed WSEC's exceptions regarding the emission limits for HCl and HF, and the explanation addresses the concerns the ALJs discussed in the PFD. The ALJs are convinced by WSEC's explanation that the proper emission limits, or performance standards, for these two pollutants are found in Special Condition 10.b of the draft permit. The other parties did not dispute WSEC's calculations or explanation, although SC/NCC urged remand to clarify any confusion. For these reasons, the ALJs conclude that the emission limits found in the draft permit<sup>1</sup> represent MACT for HCl and HF.

Accordingly, the ALJs recommend that the following FOFs and COLs be changed as follows:

- FOF No. 377:** A 98 percent removal efficiency for HCl is MACT for the control of this pollutant. The following limits are MACT for the control of HCl: 0.0013 lb\MMBtu on a 3-hour average when firing pet coke and 0.005 lb\MMBtu on a 3-hour average when firing coal.
- FOF No. 378:** A 95 percent removal efficiency for HF is MACT for the control of this pollutant. The following limits are MACT for the control of HF: 0.0004 lb\MMBtu on a 3-hour average when firing pet coke and 0.0003 lb\MMBtu on a 3-hour average when burning coal.
- COL No. 8:** WSEC did not meet its burden of proof regarding the validity of the ozone monitor data, and the health effects from coal dust, and the limits that satisfy MACT for HCl and HF.
- COL No. 28:** WSEC did not meet its burden of proof that, in accordance with 30 TAC § 116.111(a)(2)(A)(i), emissions of coal dust and HCl and HF will comply with all Commission rules and regulations and the

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<sup>1</sup> ED Ex. 14, Spec. Cond. 10.B.

intent of the TCAA, including protection of the health and property of the public.

- COL No. 45:** Except for ~~the reliance on unapproved ozone monitor data, the lack of health effects review for coal dust, and the inability to determine MACT for HCl and HF,~~ in accordance with 30 TAC § 116.111(a)(2)(I), WSEC complies with all applicable requirements of Chapter 116 regarding PSD review.
- COL No. 46:** WSEC did not comply with all applicable requirements in Chapter 116 regarding PSD review regarding because of its reliance on unapproved ozone monitor data and the lack of health effects review for coal dust; ~~and the inability to determine MACT for HCl and HF.~~
- COL No. 67:** ~~Except for the emissions limits for HCl and HF,~~ Based on the above Findings of Fact and Conclusions of Law, WSEC has made all demonstrations required under applicable federal and state laws and regulations, including 30 TAC § 116.404 regarding hazardous air pollutant major source permit applications, to be issued a hazardous air pollutant major source air quality permit with case-by-case MACT review.
- COL No. 69:** The case-by-case MACT application for WSEC facility is complete and complies with all applicable requirements for a HAP major source permit found in 30 TAC Chapter 116 and 40 CFR Part 63 regarding MACT review, ~~except for demonstrating emissions limits for HCl and HF that represent MACT.~~
- COL No. 70:** WSEC met its burden of proof regarding MACT ~~for those HAPS other than HCl and HF.~~
- COL No. 78:** Except for omissions of coal dust, ~~HCl, and HF,~~ in accordance with TEX. HEALTH & SAFETY CODE § 382.0518(b)(2), emissions from WSEC will not contravene the intent of the TCAA and will be protective of the public's health and physical property, consistent with the long-standing interpretation of the Commission's rules, regulations, and guidance.

The ALJs recommend that COL No. 72 be deleted from the proposed order. The ALJs also recommend that Ordering Provision No. 2 be omitted from the proposed order. The ordering provision No. 2 in the proposed order begins "Within 180 days, WSEC shall submit . . . ." This is the ordering provision that should be deleted since the HCl and HF issues have been resolved and are satisfactory.

**H. Permit Conditions**

**1. Special Condition 45**

The ALJs recommend that EDF's exceptions regarding Special Condition 45 be overruled.

**2. PM CEMS**

The ALJs recommend that the protesting parties' exceptions regarding PM CEMS be overruled.

**I. PAL Permit**

The ALJs recommend that EDF's exceptions regarding the PAL Permit be overruled.

**J. Transcript Costs**

The ALJs recommend that EDF's and SC/NCC's exceptions regarding the allocation of transcript costs be overruled.

**K. WSEC's Redlined Proposed Order**

In addition to the changes recommended in the preceding paragraphs, we recommend that the Commission make the following changes to the FOFs, as recommended by WSEC: FOFs 1, 13, 37, 46, 48, 105, 106, 193, 258, 274, 276, 321, 358a-358ff, and 391.

The ALJs recommend that the Commission make the following changes to the COLs, as recommended by WSEC: COLs 11a, 15, and 15a.

Unless addressed in this letter, the ALJs recommend that all of WSEC's other proposed changes not be made. The FOFs and COLs should be renumbered as appropriate.

Sincerely,



Paul D. Keeper  
Kerrie Jo Qualtrough  
Administrative Law Judges

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**STYLE/CASE:** WHITE STALLION ENERGY CENTER, LLC

**SOAH DOCKET NUMBER:** 582-09-3008

**REFERRING AGENCY CASE:** 2009-0283-AIR

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**STATE OFFICE OF ADMINISTRATIVE  
HEARINGS**

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ALJ PAUL D. KEEPER**

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